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Security Council Committee established pursuant to resolution 1540 (2004)

Note verbale dated 22 February 2007 from the Permanent Mission of Vanuatu to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of the Republic of Vanuatu to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1540 (2004) and, in accordance with Security Council resolution 1540 (2004), Vanuatu is pleased to submit its first report to the Committee.

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Annex to the note verbale dated 22 February 2007 from the Permanent Mission of Vanuatu to the United Nations addressed to the Chairman of the Committee

Report of the Republic of Vanuatu on actions taken by the Government to implement Security Council resolution 1540 (2004)

Introduction

Pursuant to United Nations Security Council Resolution 1540 (UNSCR 1540) States are required, within six months from the adoption of the resolution, to present a report to the 1540 Committee of the Council on the steps they have taken or intended to take regarding its implementation.

This report sets out the policy, legislation and operational mechanisms operating in Vanuatu to implement the requirements of the Resolution.

Operative Requirements of 1540

OP 1. Decides that all States shall refrain from providing any form of support to non-state actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;

The government of Vanuatu is fully committed to the objectives of UNSCR 1540 and withholds any support whatsoever to entities – whether State on Non-state actors, attempting to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.

International Conventions, Treaties and Arrangements

Vanuatu is a party to the following conventions that are relevant to UNSCR 1540

Nuclear Non-Proliferation Treaty (NPT)
Comprehensive Nuclear Test Ban Treaty (CTBT)
Convention of Physical Protection of Nuclear Material (CPPNM)
Chemical Weapons Convention (CWC)

The government of Vanuatu recognises the importance of, and agrees in principal with the objectives of the remaining conventions and arrangements relevant to UNSCR 1540. It is giving consideration to adopting these relative to other domestic and international priorities.

OP 2. Decides also that all states, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-state actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the forgoing activities, participate in them as an accomplice, assist or finance them.

The *Counter Terrorism and Transnational Organised Crime Act 2005 (CTTOC)*, is Vanuatu's primary counter terrorism legislative mechanism. It came into force on 24 February 2006 and contains several provisions relevant to UNSCR 1540.

These include a mechanism (s4) by which the Minister for Justice can prescribe, by regulation, entities or persons to be terrorist entities who have been identified as such by the UN Security Council. To-date, the Minister has not yet prescribed any entities or associated persons listed by the UN's 1267 Committee.

The Act contains a number of offences relating to support of terrorists. In particular it makes it an offence to provide weapons to terrorist groups, including entities that have been specified by the Minister for Justice to be terrorist groups, or to associated persons. The term *"weapon"* in the Act includes firearms, chemical, biological or nuclear weapons. The offence carries a maximum penalty of up to 25 years imprisonment and/or a fine of up to VT 125 million.

The Act also makes it an offence to import, export or transport nuclear material through Vanuatu without prior authorisation from Cabinet. The maximum penalties for these offences are imprisonment for up to 25 years and/or fines if up to VT 125 million. Other offences include receiving, possessing, using, transferring, altering, disposing or dispersing, stealing, fraudulently obtaining, demanding or threatening the use of nuclear material to cause death or serious injury to person or damage to property. Maximum penalties for these offences are 20 years imprisonment and/or fines of up to VT 100 million. The Act imposes criminal liability for persons who conspire, attempt or assist the commission of these offences.

With the exception of the offences in the *CTTOC* relating to the supply of chemical or biological weapons to terrorists there is no specific legislation regulating or controlling the manufacture, acquisition, possession, development, transportation, transfer, or use of chemical or biological weapons, their delivery systems, or related components within Vanuatu. New legislation would be required to incorporate mechanisms specifically regulating these types of activities and items. The government of Vanuatu would welcome any technical assistance available to develop and implement these mechanisms to enhance the framework already in place regarding nuclear material.

As far as criminalizing the use of nuclear, chemical or biological weapons in terrorist acts are concerned these are covered by the *CTTOC* that contains a number of criminal offences specifically directed at terrorist acts, including:

- carrying out, attempting, or participating in a terrorist bombing;
- taking, or attempting to take hostages;
- attacking, attempting, or threatening to attack an Internationally Protected Person or their property;
- unlawfully seizing, attempting or threatening to seize an aircraft or ship;
- committing, attempting or threatening acts of violence at an airport;
- financing or assisting to finance terrorist acts

The maximum penalty for the most serious of these offences is imprisonment for up to 25 years and/or fines of VT 100 million.

In addition, general criminal offences in the *Penal Code* relating to crimes such as murder, attempted murder etc. would also apply to a number of acts that could potentially be carried out by terrorists using nuclear, chemical or biological weapons. The most serious of these carry terms of up to 25 years imprisonment.

OP 3. Decides also that all states shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

(a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

The government considers the risk of nuclear, chemical or biological weapons, or related delivery systems being produced, used, stored or transported through Vanuatu to be minimal. Factors relevant to this assessment include the fact that Vanuatu has a single international Airport and Seaport through which bulk cargo and containers is handled, the small number of international destinations serviced by these ports, and the closely monitored borders of the countries from which air and shipping services to Vanuatu originate.

The *Pesticides (Control) Act 1993* is the primary legislation governing the importation and use of chemicals for agricultural purposes. The Act establishes the Pesticides Committee that considers applications for permits to import these types of chemicals into Vanuatu. However, in practice the Quarantine Service is the operational agency responsible for the administration, monitoring and enforcement of the legislation.

The *Animal Importation and Quarantine Act 1988* also regulates the importation and control of animals, and animal and biological products in Vanuatu. The term "biological products" is broad, meaning any substance, chemical, organism or micro-organism having a biological effect on animals or their products, and includes drugs, medicines and remedies, hormones, growth promotants, antibiotics, protozoa, fungi, bacteria, viruses or parasites capable of causing any disease in animals (or if dead was so capable when living).

Government officials continue to observe work being carried out under the auspices of the South Pacific Community (SPC) in Suva, Fiji on the development of a "model" Biosecurity Act. This legislation, either in full or part may be suitable for adoption in consolidating and updating Vanuatu's current bio-security legislation.

The *Explosives Act 1988* makes it an offence, unless permitted under licence issued by the Commissioner of Police, to import explosives into Vanuatu. The maximum penalty for the offence is in the case of a first offence, to a fine not exceeding VT50,000 or to imprisonment for a term not exceeding 6 months or to both. For second or subsequent offences the maximum penalty is double such penalties.

The *Firearms Act 1987* regulates the possession, importation or dealing of firearms and ammunition within Vanuatu. It prohibits these activities unless licenced by the Commissioner of Police. Applications for licences are considered by the Commission taking into account security risk assessments conducted by a vetting unit within Police.

In addition to a licencing framework, the Act contains offences and provides police with investigative and enforcement powers.

The government's primary focus in implementing the relevant 1540 obligations is the effective application of measures to exclude items of a nuclear, chemical and biological nature from Vanuatu that may present threats to its security, or that of other countries. The level of domestic controls currently in place to account for and secure such items is limited but is considered to be proportionate to the current level of risk of them entering the country. However, the government recognises the need to develop and put in place appropriate legislative and operational mechanisms to ensure the management of risk over the longer term.

(b) Develop and maintain appropriate effective physical protection measures;

The government considers the legislative controls already in place under the *CTTOC* relating to nuclear material to be reasonably comprehensive. While the level of legislative controls are not as high for items of a chemical or biological nature the risk associated with this is low given the absence of any significant chemical or biological agents in the country and the factors described in (a) above. In 2006, Vanuatu has received technical assistance provided by the Organisation for the Prohibition of Chemical Weapons (OPCW) on the drafting of legislation to implement the Chemical Weapons Convention (CWC). This draft legislation is being considered by the government for introduction into Parliament. When passed, this legislation will mean Vanuatu fully complies with the legislative requirements of that Convention.

(c) Develop and maintain appropriate border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international laws;

Overall responsibility for security of Vanuatu's border lies with Customs, Police, Immigration and Quarantine Services together with the Air and Sea Port authorities.

Currently there is no single body with formal responsibility for the coordination of counter-terrorism or border security issues at ministerial or senior official level.

However, a Combined Law Agency Group (CLAG) has previously operated. This group was comprised of senior officials from air and sea port authorities, Police, TCU, Customs, immigration and Civil Aviation. A draft Memorandum of Understanding (MOU) related to the possible re-activation of CLAG is currently with Ministers for consideration. If approved, the CLAG may be reconvened as an inter-agency forum for the coordination of policy and operational activities of these agencies.

In addition, senior officials are currently assessing the desirability of establishing a National Security Council as a high level coordinating body for all security issues affecting government. This group would be comprised of Chief Executives of agencies with interests in security issues and relevant Ministers and would report directly to Cabinet.

At an operational level, a Combined Law Enforcement Intelligence Team (CLEIT) operates between government agencies as a forum for exchanging information or discussion on operational issues. This group meets quarterly unless otherwise required by operational events.

The government of Vanuatu operates stringent controls on entry of persons into the country. The *Immigration Act 1999* and *CTTOC* provide mechanisms for preventing entry of persons who may be engaged in activity involving relevant items, or for removing them from the country. The legislation also provides means of controlling the delivery of items that are suspected of being used or intended for the commission of offences related to terrorism.

The Vanuatu Police Force (VPF) has close relationships with other regional law enforcement agencies, the Australian Federal Police (AFP) and the Pacific Transnational Crime Coordination Centre (PTCCC) in Suva, Fiji. Through these associations it has access to regional and international intelligence channels such as Interpol and other relevant intelligence agencies.

(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal and civil penalties for violations of such export control laws and regulations;

The primary legislation governing the movement of goods over Vanuatu's borders is the *Customs Act*. Under Section 29 of the Act the Minister of Customs may, subject to the approval of Cabinet, by order in writing, prohibit or restrict the importation into Vanuatu of any goods.

Pursuant to this mechanism the Minister could prohibit WMD related items relevant to UNSCR 1540.

The Act (S18) also provides mechanisms requiring operators of ships or aircraft entering Vanuatu to deliver details of cargo manifests to the Customs Comptroller shortly after arrival. A failure to provide these declarations is an offence, carrying fines of up to VT2,000,000 or imprisonment for not more than 2 years, or both.

The *Customs Act* empowers authorised officers (including customs and police officers) to search ships or aircraft for evidence of suspected offences or breaches of relevant requirements.

The government of Vanuatu continues to develop security plans for its air and seaports and ships otherwise entering its territory. The long-term objective of this work is to ensure security measures in place in Vanuatu meet the International Convention on SOLAS and the new International Ship and Port Security Code.

At an operational level, if any goods were located by customs officials during routine searches of ships, aircraft and related cargo that were suspected of being related to terrorist activity other relevant agencies would be notified along with regional intelligence bodies such as Pacific Transnational Crime Coordination Centre (PTCCC).

OP 5. Decides that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of state parties to the Nuclear Non Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organisation for the Proliferation of Chemical Weapons.

The government of Vanuatu acknowledges that no aspect of UNSCR 1540 is to be interpreted in a manner that conflicts with the rights and obligations contained in the above treaties, conventions and arrangements.

OP 6. Recognises the utility in implementing this resolution of effective national control lists and calls upon all member states, when necessary to pursue at the earliest opportunity the development of such lists.

The government of Vanuatu does not currently operate a national control list of the type contemplated by UNSCR 1540. The development and operational implementation of such a list presents considerable challenges for the government and relevant agencies especially in compiling, maintaining and enforcing it.

Officials from relevant agencies will be required to undertake further work to consider the range of options available to enhance the implementation of UNSCR 1540. The government would welcome any technical assistance available to assist officials to conduct this work.

OP 7. Recognises that some states may require assistance in implementing the provisions of this resolution within their territories and invites states in a position to do so to offer assistance as appropriate in response to specific requests to the states lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions.

The government of Vanuatu would welcome any technical assistance that is available to assist it fully implement the requirements of UNSCR 1540, particularly in developing enhanced operational capability within Police and border security agencies and the practical implementation of obligations relating to national control lists.

OP 8. Calls upon all states:

(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, chemical and biological weapons;

(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral non-proliferation treaties;

(c) To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organisation for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws.

OP 9. Calls upon all states to promote dialogue and cooperation on non-proliferation so as to address the threat posed by proliferation of nuclear, chemical and biological weapons, and their means of delivery.

OP 10. Further to counter that threat, calls upon all states, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials.

In relation to OP's 8,9 and 10 - Vanuatu supports, to the greatest extent possible, international initiatives to reduce the threat posed by the proliferation of nuclear, chemical and biological weapons, their means of delivery and related components. It will continue to participate and contribute to efforts (primarily in the Pacific region) to reduce this threat.